

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS POWER,

Civil Division

Plaintiff,

Docket No. 2:17-CV-00154-MRH

v.

HEWLETT-PACKARD COMPANY,

Hon. Mark R. Hornak

Defendant.

Monday, December 2, 24

PRETRIAL STATEMENT

The defendant HP Inc¹. submits this Pretrial Statement under the Court's Order, ECF No. 240, Local Civil Rule of Civil Procedure 16.1, and Federal Rule of Civil Procedure 26:

1. Defendant(s)' Narrative Statement of the Case:

Prior to April 2013, the plaintiff Thomas Power purchased a used HP Elitebook 8730w notebook computer. After breaking the screen of that Elitebook 8730w, on April 29, 2013, plaintiff purchased a used replacement Elitebook 8730w from eBay for \$ 130. According to Mr. Power, he never replaced the battery of either Elitebook 8730w.

The Elitebook 8730w notebook computer, as sold by HP, included multiple warnings to only use HP-approved battery packs, including: [1] a warning on the battery pack itself stating "Replace with HP spares". [2] a warning in the product documentation stating "!!WARNING! To reduce potential safety issues, use only the battery provided with the computer, a replacement battery provided by HP, or a compatible battery purchased from HP".

When the Elitebook 8730w was manufactured on August 18, 2009, "industry standards did not prohibit the use of third-party accessories, nor require an end-user alert when a third-party battery pack was installed." In the two years after April 29, 2013, plaintiff testified that he never received any type of warning while using the Elitebook 8730w, including any warning about the battery's end of life or other issue. Of course, Plaintiff did not need to be warned not to replace the battery with only an HP battery since Mr. Power never did replace the battery of his Elitebook 8730w.

Plaintiff alleges that on June 20, 2015 at approximately 1:00 a.m. in the morning, while using the WiFi in the lobby of a 24-hour gym, the after-market battery apparently had a thermal event and burned his legs. It is undisputed that the Elitebook 87030w notebook had a non-HP battery installed at the time of this alleged incident.

¹ Defendant HP Inc. has been wrongly named herein at Hewlett-Packard Company.

The plaintiff was hospitalized, and after his discharge treated with Paul Ogagan, MD Plaintiff ceased medical treatment related to the June 20, 2015 incident in early 2016.

The plaintiff cannot establish at trial that the Elitebook 8730w had any defect from a failure to warn or otherwise. The plaintiff's experts are precluded from offering an opinion concerning a battery authentication warning. Further, it is undisputed that HP gave multiple warnings to only use HP-approved battery packs with the Elitebook 8730W notebook, which would have prevented the accident if plaintiff had heeded them. Indeed, since plaintiff did not change the battery it would appear that the nature and extent of HP's warnings are irrelevant since plaintiff did not engage in the behavior that the warnings were intended to prevent.

2. Statement of Damages:

HP objects to the plaintiff's statement of damages, ECF 242 at 2-3, for failing to "includ[e] the amount and the method of calculation of all economic damages." For each category of economic damages in this case that was filed in February 2017, with trial fewer than three months away, plaintiff has simply indicated "undetermined – will supplement." ECF 242 at 2-3. The plaintiff should be precluded from claiming any damages not fairly and fully disclosed in the pretrial statements as set forth in Local Rule 16.1.C.7.

3. Witness List:

See Defendant's Witness List with Offers of Proof filed contemporaneously with Defendant's Pre-Trial Statement.

4. Exhibit List:

1. Notebook Tour - Windows XP.pdf HP Elitebook 8730w Mobile Workstation - HP000035 - HP000061
2. Getting Started - Enhanced for Accessibility-Windows XP.pdf - HP000085- HP000099
3. Power Management – Windows XP.pdf - HP000167-HP000195
4. Schematics - HP002249-HP002309
5. UL Report - HP002310-HP002330 -
6. CB Certificate - HP002331-HP002332
7. CB Report - HP002333-HP002451
8. Updated CB Certificate - HP002452-HP002453
9. Updated CB Report - HP002454-HP002465
10. System Trace for Notebook (by serial #) - HP002466
11. UL certification doc - HP002467-HP002501
12. 2.55 - System Battery Charger Test_Absolut_1.0_DB_20070919_Pass - HP002502-HP002505
13. Adapter - 120W RC SPEC2 - HP002506-HP002521
14. Adapter - 463555_C_001 - HP002522-HP002543
15. Adapter - CB report - A1M1 - HP002544-HP002560
16. Adapter - CB report (NO.135511) - HP002561-HP002721
17. Adapter - CB report-M1 (NO.153916) - HP002722-HP002750

18. Adapter - HW- OW120F133SELF (X00) Bench TEST REPORT-01042008_Jim - HP002751-HP002810
19. Adapter - HW-OW120F13 3SELF-02 - HP002811-HP002811
20. Adapter - Thermal Protect Current Protect - HP002859-HP002859
21. Adapter - UL report - HP002860-HP003020
22. Battery - Battery spec for AV08073 Supporting Documents - HP003019-HP003136
23. Battery - Battery spec for AV08073 Supporting Documents 2 - HP003049-HP003108
24. Battery - bq20z70 - HP003137-HP003153
25. EC charge control description - HP003357-HP003357
26. Guidelines for using the smart adapter - HP003358-HP003363
27. System – 2103 - HP003364-HP003452
28. System - ABSOLUT_A04_MB_20080722 - HP004846-HP004906
29. A3-09CA22651 Correction 3 Report 2009-06-22_IEC60950-1_NBP8B20 - HP005480-HP005488
30. Certificate-CB-DK-18359_IEC 60950-1_NBP12A39 - HP005489-HP005490
31. IEC 60950-1 report_NBP8A82 - HP005491-HP005500
32. HSTNN-OB59 2009-06-22 CERTIFICATE_IEC60950-1_NBP8B20 - HP005501-HP005502
33. E229881-A18-CB-1-Amendment-2_IEC 60950-1 report_NBP12A39 - HP005503-HP005519
34. DK-12653-A1_IEC 60950-1 cert_NBP8A82 - HP005520-HP005521
35. Photo of exemplar 8730w computer - PB080002
36. Photo of new HP battery pack - PB080007_cr
37. Artifact pack PCB - Incident pack pcb taken from CT scans
38. Battery charging circuit schematic part 1 - HP004849 bat chg sch pt 1
39. Battery charging circuit schematic part 2 - HP004850 bat chg sch pt 2
40. IEEE std 1625-2008 cover pg - IEEE 1625-2008 cover page
41. Purpose of authentication para 10.2 - 1625_2008_P10.2 - IEEE 1625-2008
42. Artifact computer – top - DG0019
43. Artifact computer – bottom - DG0033
44. Artifact computer – tape on front corner - DG0043
45. Artifact computer – crack on rear corner - DG0047
46. Artifact computer – product label - DG0010LCX
47. Photo Example HP pack - Sample HP Pack construction
48. Photo Example HP BMU - Sample HP BMU
49. fan speed control - Fan speed control schematic page
50. Processor temperature control page - 004860 proc temp
51. Battery pack schematic
52. Photograph of the incident notebook (Don Galler photograph 30, part of Figure 1 in Dr. Quinn Horn's Expert Report)
53. Photograph of the charger (Don Galler photograph 4, part of Figure 1 in Dr. Quinn Horn's Expert Report)
54. Photograph of an ejected cell from the incident notebook (Don Galler photograph 121, part of Figure 1 in Dr. Quinn Horn's Expert Report)
55. Photograph of the exemplar notebook and exemplar battery pack (Don Galler photograph 143, Figure 2 in Dr. Quinn Horn's Expert Report)

56. CT scan images of the incident battery pack cells with Cell 2 re-inserted into the incident battery pack virtually to demonstrate the original cell arrangement (Figure 3 of Dr. Quinn Horn's Expert Report).
57. Photograph of the labeling from the incident battery pack (Don Galler photograph 123, part of Figure 4 in Dr. Quinn Horn's Expert Report)
58. Photograph of the labeling from the exemplar battery pack (Don Galler photograph 163, part of Figure 4 in Dr. Quinn Horn's Expert Report)
59. STL Technology OB0T battery pack labeling (HP003108, part of Figure 4 in Dr. Quinn Horn's Expert Report)[
60. Photograph of a cell from the incident battery pack (Don Galler photograph 131, part of Figure 5 in Dr. Quinn Horn's Expert Report)
61. Photograph of a cell from the exemplar battery pack (Don Galler photograph 168, part of Figure 5 in Dr. Quinn Horn's Expert Report)
62. Sony US18650GR G8A schematic (HP 00378, part of Figure 5 in Dr. Quinn Horn's Expert Report)
63. CT Label Instruction from the specification document for the STL Technology OB60 battery pack, showing the "REPLACE WITH HP SPARE" guidance (HP003047, Figure 6 in Dr. Quinn Horn's Expert Report).
64. Warning present in the Windows XP, Windows Vista, and Windows 7 versions of the HP 8730W Power Management User Guides warning the end user to only use HP-provided batteries (HP000180, HP001113, HP001318, Figure 7 in Dr. Quinn Horn's Expert Report).
65. Schematic of an 18650 battery cell
66. Schematic of thermal runaway of a lithium-ion battery cell
67. Appendix H: 4th Edition of Linden's Handbook of Batteries, 2011
68. UL Standard for Safety for Lithium Batteries, UL 1642, 2004
69. NFPA 921: Guide for Fire and Explosion Investigations, 2011
70. IEEE 1625: Standard for Rechargeable Batteries for Portable Computing, 2008
71. IEEE 1725: Standard for Rechargeable Batteries for Cellular Telephones, 2006
72. Medical records of Plaintiff identified by Plaintiff in their exhibit list but with precluded information and opinions redacted.

5. Issues of Law:

HP's motion for reconsideration of the order on the motion for summary judgment, ECF 227, remains pending.

HP anticipates filing motions in limine to [1] preclude any evidence or argument concerning claimed damages not disclosed in the pretrial report under Local Rule 16.1.C.7; [2] preclude any evidence or argument concerning different or alternate warnings not disclosed under FRCP 26; [3] preclude any argument concerning the plaintiff's stricken expert opinions; [4] preclude reptile and golden rule argument; [5] preclude unsubstantiated anchoring; [6] preclude disparaging comments about defendant or counsel; [7] preclude evidence of financial status of defendant .

HP reserves the right to identify additional motions in limine to be filed in advance of the deadline to file same.

6. Expert Disclosures:

HP has attached hereto its expert disclosures of [1] Dr. Quinn Horn, PhD, P.E. [2] Don Galler, P.E., and [3] Dr. Herman Bagga, M.D.

7. Physician Report

HP has attached hereto the expert report of Dr. Herman Bagga, M.D.

8. Reservation to Amend and Supplement

HP reserves the right to file a Supplemental Pretrial Statement for purposes of supplementing and amending this Pretrial Statement as needed, as well as reserves the right to present impeachment or rebuttal testimony.

/s/ Christopher G. Betke

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Certificate of Service

We hereby certify that on Monday, 2. December 24, a true and accurate copy of the foregoing was served via the Court's Electronic Case Filing System to all counsel of record.

/s/ Christopher G. Betke

Christopher G. Betke

/s/ Michael A. Weiner

Michael A. Weiner